

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**APPLICATION OF TRIAY STAGNETTO NEISH AS SPECIAL COUNSEL TO THE  
TRUSTEE FOR RELEASE OF A PORTION OF FEES PREVIOUSLY HELD FOR THE  
PRIOR COMPENSATION PERIODS**

Keith Azopardi, together with other members and associates at the law firm of Triay Stagnetto Neish (“TSN”), special counsel for Irving H. Picard (the “Trustee”), trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS” or “Debtor”) under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”) and Bernard L. Madoff, submits this Application for release of a portion of the previously held back legal fees (“Holdback”) in the amount of \$51,872.75 for prior compensation periods.

**I. BACKGROUND**

1. On December 15, 2008, Judge Stanton of the United States District Court for the Southern District of New York, upon application filed on the same date by the Securities

Investor Protection Corporation (“SIPC”), entered an order calling for the liquidation of BLMIS in accordance with SIPA and appointing the Trustee as BLMIS’s trustee.

2. BLMIS’s liquidation proceeding was removed to this Court pursuant to SIPA § 78eee(b)(4), and, pursuant to SIPA § 78fff(b), is being conducted as though it were a case under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11 of the United States Code (the “Bankruptcy Code”).

3. On November 13, 2012, this Court entered an order approving the Trustee’s motion to retain TSN *nunc pro tunc* as of September 11, 2012 as special counsel to the Trustee in all matters pertaining to Gibraltar law and Gibraltar legal proceedings.

4. The Trustee’s motion to retain TSN established a fee arrangement pursuant to which TSN agreed to a fee reduction in the amount of 10% as well as an additional holdback of fees in the amount of 20%.

## **II. RELEASE OF THE HOLDBACK**

5. The Trustee’s motion to retain TSN established a Holdback fee arrangement in which 20% of the approved compensation is deferred until further order of the Court.

6. For the prior and current compensation periods, the amount of the Holdback for TSN’s fees is \$103,745.49. TSN seeks a release of the Holdback in the amount of \$51,872.75 upon the support of SIPC.

7. SIPC has advised TSN that it will file a recommendation in support of the fees and expenses in this Application and the release of the Holdback in the amount of \$51,872.75 for TSN.

8. Hence, TSN respectfully requests that this Court authorize the release of the Holdback payment to TSN in the amount of \$51,872.75, as supported by SIPC.

### **III. GENERAL MATTERS**

9. All of the professional services for which compensation is requested herein were performed by TSN for and on behalf of the Trustee and not on behalf of any other person or entity. No agreement or understanding exists between TSN and any other person for sharing compensation received in connection with this case, nor has any other person or entity agreed to provide TSN with compensation for the legal services described herein.

10. SIPA § 78eee(b)(5)(A) provides in pertinent part that, upon appropriate application and after a hearing, “[t]he court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred . . . by a trustee, and by the attorney for such a trustee . . . .” SIPA § 78eee(b)(5)(C) specifically establishes SIPC’s role in connection with applications for compensation and the consideration the Court should give to SIPC’s recommendation concerning fees, providing as follows:

In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

SIPA § 78eee(b)(5)(C).

11. To the extent the general estate is insufficient to pay such allowances as an expense of administration, SIPA § 78eee(b)(5)(E) requires SIPC to advance the funds necessary to pay the compensation of TSN. *See also* SIPA § 78fff-3(b)(2).

12. At this time, the Trustee has determined that he has no reasonable expectation that the general estate will be sufficient to make a distribution to general creditors or pay administrative expenses. SIPC has advised the Trustee that it concurs with this determination.

Accordingly, any fees and expenses allowed by this Court will be paid from advances by SIPC without any reasonable expectation by SIPC of recoupment thereof.

13. Therefore, with respect to this Application, TSN requests that, consistent with SIPA § 78eee(b)(5)(C), the Court “shall award the amounts recommended by SIPC.” *See In re Bell & Beckwith*, 112 B.R. 876 (Bankr. N.D. Ohio 1990). TSN expects that SIPC’s recommendation in support of the relief sought by this Application will be filed with this Court separately.

**WHEREFORE**, TSN respectfully requests that this Court enter an Order:

- a. Granting this Application; and
- b. Releasing \$51,872.75 to TSN from the Holdback for for prior compensation periods; and
- c. Granting TSN such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: July 19, 2017

TSN

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**EXHIBIT A**

**SUMMARY OF INTERIM COMPENSATION FOR TSN**

	<b>TOTAL COMPENSATION</b>
Holdback for Prior Compensation Periods:	\$103,745.49
Release of the Holdback:	\$51,872.75
<b>Total to be Paid:</b>	<b>\$51,872.75</b>